

1 KAREN P. HEWITT
2 United States Attorney
3 NICOLE ACTON JONES
4 Assistant U.S. Attorney
5 California State Bar No. 231929
6 United States Attorney's Office
7 880 Front Street, Room 6293
8 San Diego, California 92101-8893
9 Telephone: (619) 557-5482
10 Email: nicole.jones@usdoj.gov

11 Attorneys for Plaintiff
12 United States of America

13 UNITED STATES DISTRICT COURT

14 SOUTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,) Case No. 07CR3239-JM
16)
17 Plaintiff,) DATE: January 11, 2008
18 v.) TIME: 11:00 a.m.
19 LEONARDO SAN JUAN, JR.,) GOVERNMENT'S RESPONSE AND
20) OPPOSITION TO DEFENDANT'S
21 Defendants.) MOTION TO OBTAIN A BILL OF
22) PARTICULARS
23)
24) TOGETHER WITH STATEMENT OF
25) FACTS AND MEMORANDUM OF POINTS
26) AND AUTHORITIES AND GOVERNMENT'S
27) MOTION FOR RECIPROCAL DISCOVERY

28 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and
1 through its counsel, Karen P. Hewitt, United States Attorney,
2 and Nicole Acton Jones, Assistant United States Attorney, and
3 hereby files its response and opposition to Defendant's above-
4 referenced motion and the Government's Motion for Reciprocal
5 Discovery. Said response is based upon the files and records of
6 this case, together with the attached statement of facts and
7 memorandum of points and authorities.

28 //

27 //

28 //

I.

STATEMENT OF THE CASE

On November 29, 2007, a grand jury returned a one-count Indictment against defendant Leonardo San Juan, Jr., charging him with possession of an unregistered firearm, in violation of 26 U.S.C. § 5861(d). On December 5, 2007, Defendant was arraigned on the Indictment and entered a plea of not guilty.

II.

STATEMENT OF FACTS

On June 25, 2006, a cooperating citizen received information from an unidentified female that her boyfriend, an active duty Marine, was in possession of AK-47 machineguns that he had brought back from his tours of duty in Iraq. Agents with the Naval Criminal Investigative Service conducted an investigation and identified the female as Christina Ramirez. On June 28, 2006, agents interviewed Ramirez at her residence. Ramirez stated she leased the residence with her fiancé, Leonardo San Juan, Jr. A consent search of the apartment and its associated garage revealed an AK-47 machinegun hidden in the garage.

20 Testing of the firearm by the Bureau of Alcohol, Tobacco,
21 Firearms and Explosives (ATF) revealed that the firearm was a
22 functional, fully-automatic AK-47. In addition, the ATF
23 determined that the machinegun had been manufactured at a
24 factory in Bulgaria and additional markings on the weapon
25 indicated it had been issued to the Iraqi National Forces.

26 A search of the National Firearms Registration and Transfer
27 Record revealed no registration records or authorizations
28 allowing Defendant to possess a fully automatic weapon.

III.

POINTS AND AUTHORITIES

A. DEFENDANT'S MOTION FOR A BILL OF PARTICULARS
SHOULD BE DENIED

1. Introduction

Defendant seeks to obtain a Bill of Particulars but fails to explain how the Indictment is insufficient or specify what additional information is allegedly required. The Indictment states that Defendant is being charged with possessing a fully automatic AK-47 machinegun, which had not been registered to Defendant in the National Firearms Registration and Transfer Record, in violation of 26 U.S.C. § 5861(d). The charge is clear and specific and contains all of the "essential facts" of the offense charged.^{1/} Fed.R.Crim.P. 7(c)(1). Defendant's motion should be denied.

2. The Applicable Law

In determining whether a request for a Bill of Particulars should be granted, courts look initially to whether the indictment is sufficient to inform the defendant of the charges against him and avoid unfair surprise or prejudice. See United States v. Calabrese, 825 F.2d 1342, 1347 (9th Cir. 1987) (motion for Bill of Particulars denied when indictment sufficient to inform defendant of charges and no surprise or prejudice); United States v. Mitchell, 744 F.2d 701, 705 (9th Cir. 1984) (one of the purposes of a Bill of Particulars is to minimize the danger of unfair surprise at trial). "Generally, an indictment

28 ¹/The Government notes that it will be seeking a superceding indictment to correct a clerical error regarding the date alleged in the indictment. The correct date is on or about June 28, 2006.

1 is sufficient if it sets forth the elements of the charged
2 offense so as to ensure the right of the defendant not to be
3 placed in double jeopardy and to be informed of the offense
4 charged." United States v. Fernandez, 388 F.3d 1199, 1217 -1218
5 (9th Cir. 2004) (citations and quotations omitted).

6 3. A Bill of Particulars Is Neither Necessary Nor Required

7 The one-count indictment charges Defendant with possession
8 of an unregistered firearm in violation of Title 26 U.S.C. §
9 5861(d). In order for Defendant to be found guilty of this
10 charge, the Government need only prove two elements: (1) that
11 Defendant knowingly possessed the firearm and (2) the firearm
12 was not registered to Defendant in the National Firearms
13 Registration and Transfer Record. See Committee on Model
14 Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury
15 Instructions for the Ninth Circuit, §9.31 (West ed. 2003). The
16 term "firearm" is defined at 26 U.S.C. § 5845(a). The
17 definition of "firearm" includes a "machinegun," which in turn
18 is defined as "any weapon which shoots, is designed to shoot, or
19 can be readily restored to shoot, automatically more than one
20 shot, without manual reloading, by a single function of the
21 trigger." See 26 U.S.C. § 5845(b).

22 The Indictment in this case clearly states that Defendant
23 willfully and unlawfully possessed a "fully automatic AK-47
24 machinegun, which had not been registered to defendant in the
25 National Firearms Registration and Transfer Record." Thus, the
26 indictment not only sets forth the two elements of offense
27 charged, the indictment also provides a clear description of the
28 charged firearm.

1 Moreover, "[f]ull discovery will obviate the need for a Bill
2 of Particulars." United States v. Long, 706 F.2d 1044, 1054
3 (9th Cir. 1983); United States v. Clay, 476 F.2d 1211, 1215 (9th
4 Cir. 1973) (full discovery will obviate the need for a bill of
5 particulars); United States v. Mitchell, 744 F.2d 701, 705 (9th
6 Cir. 1984) (no allegation that full discovery was not afforded
7 pursuant to Rule 16). Here, the Government has already provided
8 a significant amount of discovery, and will provide all Rule 16
9 discovery and even Jencks statements prior to the trial in this
10 matter.

11 The Government has thus far provided Defendant with over 76
12 pages of discovery, and will provide any additional discovery on
13 an ongoing basis. The discovery produced to date includes
14 reports of witness interviews, copies of sworn statements,
15 reports detailing the results of testing conducted by the ATF
16 and the results of the National Firearms Act records checks. In
17 this case, Defendant has little, if any, chance of being
18 unfairly surprised at trial.

19 In sum, the indictment sets out the essential facts of the
20 crime charged with sufficient specificity for Defendant to, if
21 appropriate, invoke the Double Jeopardy Clause. It also
22 provides sufficient notice of the charged offense to allow
23 Defendant to prepare for trial. Finally, the discovery already
24 provided, and the Government's intent to provide further
25 discovery, including Jencks materials, prior to trial obviates
26 any need for a Bill of Particulars in this case. Defendant's
27 motion should therefore be denied.

28 //

1 **IV.**

2 **MOTION FOR RECIPROCAL DISCOVERY**

3 The United States moves the Court to order Defendant provide
4 all reciprocal discovery to which the United States is entitled
5 under Rules 16(b) and 26.2. Rule 16(b) (2) requires Defendant to
6 disclose to the United States all exhibits and documents which
7 Defendant "intends to introduce as evidence in chief at the
8 trial" and a written summary of the names, anticipated
9 testimony, and bases for opinions of experts the defendant
10 intends to call at trial under Rules 702, 703, and 705 of the
11 Federal Rules of Evidence.

12 **V.**

13 **CONCLUSION**

14 For the foregoing reasons, the Government respectfully
15 requests that Defendant's motion for a bill of particulars be
16 denied and that the Government's motion for reciprocal discovery
17 be granted.

18 DATED: January 3, 2008.

19 Respectfully submitted,

20 KAREN P. HEWITT
21 United States Attorney

22 s/Nicole Acton Jones
23 NICOLE ACTON JONES
24 Assistant U.S. Attorney

IT IS HEREBY CERTIFIED THAT:

I, Nicole Acton Jones, am a citizen of the United States and
am at least eighteen years of age. My business address is 880
Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **Government's Response and Opposition and Motion for Reciprocal Discovery** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

15 || 1) Joseph H. Low, IV

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

18 || none

19 the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is
true and correct.

22 || Executed on January 3, 2008.

s/Nicole Acton Jones
NICOLE ACTON JONES
E-mail: nicole.jones@usdoj.gov